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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,830	01/22/2004	Kenneth Bruce Flaniken	P2004/001	7692
7590	03/21/2005		EXAMINER	
Mr. Martin A. Weeks 1909 Aladdin Norman, OK 73072			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8W

Office Action Summary	Application No. 10/763,830	Applicant(s) FLANIKEN, KENNETH BRUCE	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5, 7, 9, 10, 13-15 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 11, 12, 16 and 17 is/are rejected:
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of figures 1-4 in the reply filed on 01/31/05 is acknowledged. Claims 1-4, 6, 8, 11, 12, 16 and 17 relate to figures 1-4 and claims 5, 7, 9, 10, 13-15 and 18-20 are non-elected at this time.

Specification

2. The disclosure is objected to because of the following informalities: on page 8, line 10 should "hasp" read "clasp"?

Appropriate correction is required.

Claim Objections

3. Claim 6 is objected to because of the following informalities: it is unclear how the pocket can be attached to both the hood and to the garment body portion. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Way (US 6,665,878).

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In regard to claim 8, Way teaches a garment (1) for a person comprising a body portion (7) to substantially cover a torso of the person (figures 1 and 2). A collar (9) located near the top of the body portion (7), the collar (9) generally extending around the neck of the person. A unitary head-and-face cover (2) to substantially cover and resiliently engage a head and face of the person to shield the head and face from wind, thereby impeding heat convection from the head and the face of the person (column 2, lines 26-32). The head-and-face cover (2) being in a deployed position when the head-and-face cover is covering the head and face of the person (figures 1 and 2). A storage structure (3) attached to the garment near the collar (9) such that the head-and-face cover (2) is rolled and crumpled into a compact mass for insertion into the storage structure for compact storage of the head-and-face cover when it is not in the deployed position (figures 3-6).

In regard to claim 12, Way teaches the head-and-face cover (2) being constructed from an elastic material that resiliently engages the head and face of the person when the head-and-face covering is deployed (column 2, lines 26-32).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Way.

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In regard to claim 1, Way teaches a garment (1) for a person comprising a garment body portion (7) that substantially covers a torso of the person. A hood (10) attached to the garment body portion and a rollable head-and-face cover (2) attached to the garment body portion (11), such that the hood (10) is external to the head-and-face cover (2). The head-and-face cover (2) resiliently engages a head and face of the person when the head-and-face cover are in a deployed position (column 2, lines 26-32).

However, Way fails to teach the head-and-face covering attached to both the hood and the garment body portion.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the head-and-face covering attached to both the garment body portion and the hood because Applicant has not disclosed that the head-and-face covering attached to both the garment body portion and the hood provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the head-and-face covering attached to both the garment body portion and the hood or attached to just the garment body portion because as stated in applicants specification, page 2, lines 11-12 as long as the head-and-face covering is attached to one of the garment body portion or the hood portion it meets the invention as disclosed. Therefore, it would have been an obvious matter of design choice to modify Way to obtain the invention as specified in claim 1.

In regard to claim 2, Way teaches the head-and-face (2) cover being deployed and the hood (10) is in an up position (figures 1 and 2). The hood (10) is positioned over a top and back of the head-and-face to form an insulating air layer about the head of the person between the head-and-face cover and the hood (figures 1 and 2).

In regard to claim 3, Way teaches the head-and-face cover (2) operates independently from the hood (figures 3-6). The head-and-face cover (2) may be deployed or not deployed irrespective of the position of the hood and the hood is capable of being positioned in the up or down position irrespective of the deployment or non-deployment of the head-and-face cover (figures 3-6).

In regard to claim 4, Way teaches a collar (9) and a storage structure (3) attached to the garment near the collar such that the head-and-face cover (2) is rolled and crumpled into a compact mass for insertion into the storage structure for compact storage of the head-and-face cover when it is not in the deployed position (figures 3-6).

In regard to claim 11, Way fails to teach the storage structure and the head-and-face cover being water impermeable.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the storage structure and the head-and-face covering in a water impermeable material because Applicant has not disclosed that the storage structure and the head-and-face covering having a water impermeable material provides an advantage, is sued for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the storage structure

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and the head-and-face covering having a water impermeable material or made out of any other material because as stated in Applicant's specification, page 10, paragraph 47 the storage structure and the head-and-face cover can be made out of any suitable, expandable, natural or synthetic material. Therefore, it would have an obvious matter of design choice to modify Way to obtain the invention as specified in claim 11.

In regard to claim 17, Way teaches a garment (1) for a person comprising a garment body portion (7) that substantially covers a torso of the person. A hood (10) attached to the garment body portion (7), wherein the hood covers a back and top of a head of the person when the hood is in the up position and wherein the hood is capable of dangling behind an upper back of the person when the hood is in the down position (figures 1-6). A ski mask (2) attached to the garment body portion such that the hood is external to the ski mask, wherein the ski mask (2) resiliently engages a head and face of the person when the ski mask is in a deployed position and wherein the ski mask is rollable in a direction substantially parallel to a spin of the person (column 2, lines 26-32).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the ski-mask attached to both the garment body portion and the hood because Applicant has not disclosed that the ski-mask attached to both the garment body portion and the hood provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the ski-mask attached the both the garment body portion

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and the hood or attached to just the garment body because as stated in applicants' specification, page 2, lines 11-12 as long as the ski-mask is attached to one of the garment body portion or the hood portion it meets the invention as disclosed. Therefore, it would have been an obvious matter of design choice to modify Way to obtain the invention as specified in claim 17.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Way in view of Duyn (US 6,370,692).

Way provides a hood and head-and-face covering as described above in claim 1 and 4. Further, Way teaches the storage pocket (3) attached to the garment body portion along sides and a bottom of the pocket and the pocket having an open top to receive the head-and-face cover (figures 3). However, Way fails to teach the storage structure is a pocket located in the hood.

Duyn teaches a storage structure of a pocket (40) located in the hood (50) of an outdoors jacket (10).

It would have been obvious to have provided the hood and head-and-face covering of Way with the hood pocket of Duyn, since the garment of Way provided with an additional storage pocket in the hood allows the user to store items when not needed by the wearer.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Way in view of DeHart (US 6,397,395).

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Way provides a jacket having a hood and a face-and-head covering. However, Way fails to teach a drawstring to secure the hood to the user by tying the drawstring around a chin of the user.

Dehart, teaches a drawstring (418) to secure a hood (402) to the user by tying the drawstring (418) around a chin of the user (column 4, lines 16-18).

It would have been obvious to have provided the jacket of Way with the drawstring of DeHart, since the garment of Way provided with a drawstring around the hood opening would provide a hood that can be adjusted and secured to a user's head shape and size as desired for proper fit and protection against the elements.

Conclusion

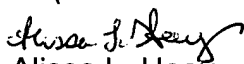
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cabelinsky, Milkes, Post, Johns, Daiber, Davidson, Allen, Little, Schuessler, Pagano, Webster, Geller, Reitz, Thomas and Boezi are all cited to show closely related garments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Alissa L. Hoey
Patent Examiner
Technology Center 3700